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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT CHRISTOPHER CURRY,

Defendant and Appellant.

A137784

(Contra Costa County  
Super. Ct. No. 51107846)

A jury convicted Robert Curry of assault with a firearm. His sole contention on appeal is that the trial court erred by requiring him to pay \$500 in attorneys' fees under Penal Code 987.8.<sup>1</sup> We affirm.

I.

FACTUAL AND PROCEDURAL  
BACKGROUND

In March 2011, Curry shot a victim with a rifle after threatening to rob him. The operative information charged Curry with felony counts of assault with a firearm and attempted second degree robbery. In connection with the assault charge, he was alleged to have inflicted great bodily injury and to have personally used a firearm. In connection

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<sup>1</sup> All further statutory references are to the Penal Code.

with the attempted-robbery charge, he was alleged to have personally used a firearm.<sup>2</sup> A jury convicted him of the assault charge and accompanying enhancements but found him not guilty of the attempted-robbery charge.

The trial court sentenced Curry to nine years in prison, comprised of a term of three years for the assault and consecutive terms of three years each for the two enhancements. In addition to imposing various other fines and fees, the court required Curry, who was represented by court-appointed counsel, to pay “attorney fees of \$500.”

## II. DISCUSSION

Curry contends that the \$500 in fees should be stricken because the trial court did not comply with section 987.8 before ordering him to pay them. We conclude he forfeited this claim.

“In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, . . . the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. . . . The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.” (§ 987.8, subd. (b).) “If the court determines that the defendant has the present ability to pay all or part of the cost, the court shall set the amount to be reimbursed and order the defendant to pay the sum to the county . . . .” (§ 987.8, subd. (e)(5).)

Curry argues that the \$500 in fees was improperly imposed because no hearing on his ability to pay was held by either the trial court or a designated county officer. We agree with the Attorney General that Curry forfeited this claim because he failed to object

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<sup>2</sup> The charges were brought under sections 245, subdivision (a)(2) (assault) and 211, 212.5, subdivision (c), and 664 (attempted robbery). The enhancements were alleged under sections 12022.5, subdivision (a)(1) (use of firearm in connection with assault), 12022.7, subdivision (a) (infliction of great bodily injury), and 12022.53, subdivision (b) (use of firearm in connection with attempted robbery).

to the imposition of the fees on this or any other basis. Although the issue was unsettled at the time the parties submitted their briefs, our state Supreme Court has since held that the failure to challenge below the imposition of fees under section 987.8 forfeits the issue on appeal. (*People v. Aguilar* (2015) 60 Cal.4th 862, 864.) Under *Aguilar*, Curry's claim fails.

In his reply brief, Curry argues for the first time that the failure to object to the imposition of attorneys' fees constituted ineffective assistance of counsel. But claims of ineffective assistance of counsel are forfeited when they are first raised in a reply brief, even if raised in response to the Attorney General's argument that an issue was forfeited or waived by a failure to object below. (*People v. Grimes* (2015) 60 Cal.4th 729, 757.) Thus, we decline to consider the ineffective-assistance claim because Curry failed to make it in his opening brief.

### III. DISPOSITION

The judgment is affirmed.

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Humes, P.J.

We concur:

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Margulies, J.

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Dondero, J.